IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2041 OF 2003
IN
SUIT NO. 726 OF 1993

Prabhakar E. Dudhawadkar & Anr. ..Plaintiffs.

Versus

Mrs. Subhangi R. Survey & Ors. ..Defendants.

Mr. D.G.Bagwe for the Plaintiffs.

Mr.D.B. Sawant for Defendant No.2.

CORAM : S. J. VAZIFDAR, J.
DATED : 18TH NOVEMBER,2005.

P.C.:

1. The suit is filed to recover the amounts paid by the plaintiff to the defendant No.1. As a result of defendant No.1, having failed to perform her obligation under an agreement for the sale of the flat; the plaintiffs opted to terminate the agreement and seek recovery of the amount under the agreement. The plaintiffs also has a charge in respect of the said amount over the suit flat.

2. The learned counsel on behalf of the defendant No.2 makes a statement that defendant No.2 is in exclusive possession of the suit flat. The learned counsel further undertakes on behalf of the defendant No.2, not to alienate, encumber or part with

possession or create any third party right, title or interest in respect of the suit flat. The statement and undertakings are accepted.

3. None of the other defendants have filed any affidavit in reply. The plaintiff is, therefore, justified in contending that the averments contained in the plaint ought to be accepted.

4. In the circumstances, the notice of motion is made absolute in terms of prayer clause (a).

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